

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

HENRY SEBASTIAN ROHDEN,

Petitioner,

v.

H. R. RIOS, JR., Warden,
Federal Correctional Institution, Florence, CO,

Respondent.

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2:06-CV-0146

REPORT AND RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Came for consideration the December 15, 2006 application to proceed *in forma pauperis* on appeal filed by petitioner. By his application, petitioner contends he is “financially unable to prepay the fees and costs or to give security for this appeal.” Petitioner acknowledges, however, that he receives approximately \$70 per month from his employment, and that he has received approximately \$1,700 in gifts from family members to assist him “in gaining post-conviction relief.” Petitioner avers he does not have any cash or money in a checking or savings account.

Attached to petitioner’s application is an account balance statement reflecting a current balance of \$648.82 in his prison account, and deposits of \$1,806.88 in the previous six (6) months. Petitioner has sufficient funds to proceed on appeal.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that petitioner’s application to proceed *in forma pauperis* on appeal be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 18th day of January 2007.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).